

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ANGEL SOTO,	:	CIVIL ACTION
Petitioner,	:	
	:	
	:	
v.	:	NO. 08-1641
	:	
MICHAEL KLOPOTOSKI, et al.,	:	
Respondents.	:	

MEMORANDUM

BUCKWALTER, S. J.

December 23, 2008

Petitioner has filed objections to the Report and Recommendation of Magistrate Judge Linda K. Caracappa, which are essentially the same reasons he presented in his habeas corpus petition.

Having conducted a *de novo* review of the prior history of this case, the court finds the magistrate judge's report to have carefully and correctly resolved the issues raised by petitioner. Petitioner's primary challenge, both in his petition as well as his objections, is the matter of the jury instructions concerning first degree murder and accomplice liability. As found by the magistrate judge, these instructions were correct.

Petitioner also raises an objection that the evidence was insufficient to prove that he actually killed the victim.

The magistrate judge found this issue to be procedurally defaulted and that conclusion correctly states the reasons supporting it. (Report and Recommendation p. 16).

Having found no basis for petitioner's objections, the court adopts the Report and Recommendation and enters the following order.

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ORDER

AND NOW, this 23rd day of December, 2008, upon careful and independent consideration of the petition for writ of habeas corpus, and after review of the Report and Recommendation of United States Magistrate Judge Linda K. Caracappa, and the objections thereto, it is hereby **ORDERED** that:

1. The Report and Recommendation is APPROVED and ADOPTED.
2. The petition for writ of habeas corpus is DENIED with prejudice.
3. There is no probable cause to issue a certificate of appealability, the petitioner having failed to make a substantial showing of the denial of any constitutional right.
4. The Clerk of Court shall mark this case CLOSED for statistical purposes.

BY THE COURT:

s/ Ronald L. Buckwalter
RONALD L. BUCKWALTER, S.J.